

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 26, 2021 at 11:00 a.m.

1. [18-20456-E-13](#) **MARIA ANDRICHUK**
[21-2033](#) **SW-2**
ANDRICHUK V. CLEAR RECON CORP.
ET AL

**MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
7-20-21 [\[24\]](#)**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Debtor (*pro se*) on July 20, 2021. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss Adversary Proceeding is granted.

Bank of America, National Association ("Defendant") moves for the court to dismiss all claims against it in Maria Andrichuk's ("Plaintiff-Debtor") Amended Complaint according to Federal Rule of Civil Procedure 12(b)(6).

REVIEW OF FIRST AMENDED COMPLAINT

The First Amended Complaint ("FAC") seeks relief pursuant to 11 U.S.C. § 362 and § 105(a) for: (1) filing fraudulent foreclosure and/or real property documents; (2) filing motions with this court

for which Plaintiff-Debtor alleges Defendants had no standing; (3) obtaining an order annulling the automatic stay as they relate to a foreclosure sale conducted by Defendants on March 6, 2017. FAC ¶ 32. It is also asserted that the pleadings filed with the court by Defendants constituted a fraud on the court. *Id.*, ¶ 33.

In Paragraph 33 of the FAC Plaintiff-Debtor also states that the pleadings and conduct at issue were not in connection with Plaintiff-Debtor's bankruptcy case, but a "prior related case," that of an entity named "Hard Stone CBO Trust." *Id.*

Plaintiff-Debtor further asserts that the court in this Adversary Proceeding should rescind orders entered in the Hard Stone CBO Trust bankruptcy case – specifically, the order in that case annulling the automatic stay. *Id.*, ¶ 38. By rescinding the order annulling the stay in the Hard Stone CBO Trust bankruptcy case, that would void the foreclosure sale as against Hard Stone CBO Trust, Plaintiff-Debtor should be awarded damages for the foreclosure having been conducted in violation of the un-annulled stay in the Hard Stone CBO Trust bankruptcy case. *Id.*

In Paragraph 42 of the FAC, Plaintiff-Debtor further states that based on information and belief "Hard Stone CBO Trust will file a Motion to Set Aside/Vacate the Default Judgment on the Motion to Annul the Automatic Stay." *Id.*

In asserting that Clear Recon Corp. and Bank of America, collectively "Defendants," lacked standing in requesting such relief, the FAC alleges the following:

- A. Defendant Bank of America was not the original lender and the only stamped endorsement on the original Note has a forged stamped signature of David A. Spector. Defendants were not parties to the original transaction.
- B. Defendant did not hold a valid and enforceable, secured or unsecured claim against property of the bankruptcy estate: Debtor's single-family home, 1757 Park Oak Drive, Roseville, California ("Property").
- C. On March 1, 2017, Defendant Bank of America directed Defendant Clear Recon Corp to sell Plaintiff's Property, while an automatic stay was still in effect.
- D. On June 21, 2017, in another case relating to the Property, Defendant Bank of America filed a Motion for Relief from the Automatic Stay.
- E. On June 25, 2017, the court granted Defendant Bank of America's Motion for Relief from the Automatic Stay in the other case relating to the Property.
- F. Plaintiff-Debtor filed for bankruptcy on January 29, 2018, which instituted the Automatic Stay.
- G. Defendants intentionally filed fraudulent foreclosure and/or real property documents. Thus, Defendant had no standing to seek annulment of the

automatic stay.

- H. Defendant willfully violated the automatic stay by foreclosing on Plaintiff-Debtor's property.
- I. By foreclosing on the Property without standing, which is a fraud upon the court and the Chapter 13 case, the court should sanction Defendants.
- J. The court should rescind its own order granting Defendant Bank of America's Motion to Annul the Automatic Stay in a related case.

Dckt. 20.

REVIEW OF MOTION

The Motion seeks the dismissal of the First Amended Complaint's claims, stating grounds which include the following:

- A. Plaintiff-Debtor's First Amended Complaint fails to state a claim for which relief can be granted because Defendant had standing to seek an order annulling the automatic stay.
- B. **Plaintiff-Debtor assigned the Property to Hard Stone CBO Trust, an unauthorized third party, prior to the foreclosure sale.** Defendant did not receive notice of the transfer or Hard Stone CBO's bankruptcy and so Defendant proceeded with the foreclosure sale.
- C. Once Defendant discovered the unauthorized transfer and bankruptcy filing, Defendant sought and obtained the order annulling the say and thus validating its foreclosure sale.
- D. This adversary complaint is subject to dismissal under the doctrine of *res judicata*, where an identical adversary complaint based on the same allegations regarding standing and violations of the stay was filed by Hard Stone and later dismissed by this court.
- E. This Adversary Proceeding is improper to determine civil contempt or to seek to rescind a judgment because relief of this kind should be requested by motion.
- F. Defendant had standing to seek annulment of the stay because as stated in Defendant's Motion for Relief, Defendant held possession and could enforce the Note including seeking annulment of the stay in order to validate the foreclosure sale, had no notice of the unauthorized transfer to Hard Stone, or notice of Hard Stone's bankruptcy prior to the sale. Plaintiff-Debtor did not oppose the Motion for Relief.

PLAINTIFF-DEBTOR'S OPPOSITION

Plaintiff-Debtor filed an Opposition on August 11, 2021. Dckt. 37. Plaintiff-Debtor asserts the following:

1. Plaintiff-Debtor disputes that Defendant is the holder of the Note and Defendant has failed to provide evidence to meet its burden showing that Defendant is indeed the holder of the note.
2. Plaintiff-Debtor disputes that she owes any debt to Defendant because Defendant was not the original Lender and the only stamped endorsement of the Note is a forged signature.
3. Defendant is not the beneficiary of the Note and thus had no standing to file the Motion to Annul the Automatic Stay because the Note provided by Defendant was made through the use of fraud and forgery.
4. Hard Stone CBO Trust intends to file a Motion to Set Aside/Vacate the Default Judgment on the Motion to Annul the Stay, which was granted due to Hard Stone having failing to file an Opposition.
5. Defendant has failed to file a Proof of Claim in her case.
6. The debt to Defendant is disputed because Plaintiff-Debtor denies that Defendant held a valid and enforceable, secured or unsecured claim against Plaintiff-Debtor's residence.
7. *Res Judicata* is inapplicable because Plaintiff-Debtor and Hard Stone CBO Trust are not the same, or identical parties, and the real property interests of Hard Stone and Plaintiff-Debtor were different at the times each party filed actions against Defendant.
8. Plaintiff-Debtor did not file her First Amended Complaint to seek relief from judgment but to assert her own interests in the residence, not the interest of Hard Stone at the time the order for relief was granted against a different plaintiff.
9. Defendant violated the stay and the Motion for Relief was filed with the purpose of undoing its unlawful violation of the automatic stay. Hard Stone's failure to oppose the Motion should not have an effect on Plaintiff-Debtor here.
10. Defendant had no standing to seek annulment of the stay because it was not the Note Holder and provided no evidence showing so when it filed the Motion for Relief, except its own assertions and requests of judicial notice of recorded documents that amount to nothing more than inadmissible hearsay. Thus, Defendant failed to meet the burden of proving that it is in fact the Note Holder.
11. Defendant's fraudulent actions and lack of standing supersede any lack of filing of an Opposition.
12. If the court finds deficiencies in Plaintiff-Debtor's First Amended Complaint,

Plaintiff-Debtor requests leave to amend.

DEFENDANT'S RESPONSE

Defendant filed a Reply on August 19, 2021 reasserting the same arguments stated in the Motion. Dckt. 44. Defendant reasserts that the order annulling the stay was valid where Defendant was unaware of the transfer or of Hard Stone's bankruptcy filing. Further, Defendant again argues that the filing of this adversary is not the proper means for this court to address a violation of the stay and even if the court were to use this adversary as Motion for Reconsideration, the proceeding is untimely as the order granting the annulment was entered four years ago.

Defendant also turns to Plaintiff-Debtor's lack of standing because she is not the real party in interest to bring forth this action as only Hard Stone can pursue a violation of the stay. Lastly, Defendant asserts that Defendant had standing to seek annulment of the stay because it was the holder of the Note and thus entitled to its enforcement and Defendant did not violate the Stay because no such stay was in effect at the time of the foreclosure sale.

APPLICABLE LAW

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that a complaint have a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. FED. R. CIV. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.* (citing 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235–36 (3d ed. 2004) (“[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”)).

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether to grant a motion to dismiss should be resolved in favor of the pleader. *Pond v. Gen. Elec. Co.*, 256 F.2d 824, 826–27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *see also Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Federal Rule of Civil Procedure 12(b)(6), a plaintiff cannot “plead the bare elements of his cause of action, affix the label ‘general allegation,’ and expect his complaint to survive a motion to dismiss.” *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (“[A] plaintiff's obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do.”).

In ruling on a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6), the Court may consider “allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice.” *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007).

The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court “required to “accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994) (citations omitted).

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

DISCUSSION

Debtor Lacks Standing

As earlier noted by this court in connection with a motion to dismiss, Plaintiff-Debtor has no standing to allege a violation of a third party’s automatic stay under 11 U.S.C. 362. Federal Rule of Bankruptcy Procedure 7017 (incorporating Federal Rule of Civil Procedure 17) states that an action must be prosecuted in the name of a real party in interest. Specifically, Rule 17 lists the following as real parties in interest:

- (A) an executor;
- (B) an administrator;
- (C) a guardian;
- (D) a bailee;
- (E) a trustee of an express trust;
- (F) a party with whom or in whose name a contract has been made for another’s benefit; and
- (G) a party authorized by statute.

to sue in their own names without joining the person for whose benefit is brought. A review of the docket shows Plaintiff-Debtor is not a party in interest in the Hard Stone CBO Trust bankruptcy case. Plaintiff-Debtor argues Defendant violated Hard Stone CBO Trust’s automatic stay by ordering foreclosure of the property commonly known as 1757 Park Oak Drive, Roseville, California on March 1, 2017. Debtor claims the foreclosure action was in violation of the automatic stay granted to Hard Stone CBO Trust pursuant to their bankruptcy filing on January 29, 2017.

Even if the automatic stay in the Hard Stone case was not annulled by the court, Plaintiff-Debtor is not Hard Stone CBO Trust and has no standing to pursue a claim for violation of the automatic stay in that case. Similarly, in the event Hard Stone CBO Trust chooses to pursue filing a motion to vacate the order annulling the automatic stay, Plaintiff-Debtor would still have no standing to pursue violation of Hard Stone CBO Trust’s automatic stay. Such rights belong to Hard Stone CBO Trust’s and only they, not Plaintiff-Debtor, can pursue such causes of action at their discretion. Thus, Plaintiff-Debtor has failed to state a claim for which relief can be granted.

There Was No Automatic Stay for Defendant to Violate

Even if Plaintiff-Debtor had standing, there were no stays with respect to Plaintiff-Debtor in

effect that Defendant could have violated. Plaintiff-Debtor alleges Defendant violated the automatic stay by ordering foreclosure proceedings on March 1, 2017 and then executing the foreclosure sale on March 6, 2017. As Plaintiff-Debtor notes in their First Amended Complaint, the automatic stay in the Hard Stone CBO Trust case was annulled. Having been annulled, there was no automatic stay in effect when Defendant ordered and executed the foreclosure sale in March 2017.

Moreover, Plaintiff-Debtor's present case was filed on January 29, 2018. The Plaintiff-Debtor's case was filed more than eight months after the alleged violations of the automatic stay. Therefore, there is no way the automatic stay in Plaintiff-Debtor's case could have been violated. In addition, a review of the docket reveals Plaintiff-Debtor did not list a legal, equitable, or other type of interest in "1757 Park Oak Drive, Roseville, California" in their schedules filed with the court. Based on a review of the facts in a light most favorable to Plaintiff, there does not appear to be a violation of the automatic stay.

Defendant is Not a Creditor

Plaintiff-Debtor alleges Defendant did not file a proof of claim in the present case and as such is not entitled to payment. The issue is not whether Defendant filed a proof of claim, but whether Defendant was exercising rights it had in property of Hard Stone. That Plaintiff-Debtor asserts a foreclosure sale was completed does not alter the rights and interest it had. If Hard Stone disputes such, it can, in a court of appropriate jurisdiction, litigate such *bona fide* disputes. Additionally, a creditor with a secured claim is not required to file a proof of claim to preserve that creditor's security interest and right to collateral, but may negatively impact a creditor's ability to get paid on any unsecured portion of the claim. Fed. R. Bankr. P. 3002(a), stating, "A lien that secures a claim against the debtor is not void due only to the failure of an entity to file a proof of claim."

Res Judicata Bars the Re-litigation of this Claim

Defendant asserts that Plaintiff-Debtor's complaint is identical to Hard Stone CBO Trust's allegations in its Adversary Complaint (20-2102; Complaint, Dckt. 1). First, Defendant asserts Hard Stone CBO Trust and Plaintiff-Debtor are in privity and thus the determination in favor of Defendant should be binding on Plaintiff-Debtor. Next, Defendant asserts the adversary proceeding between Hard Stone CBO Trust and Defendant resulted in a finding for Defendant on the merits. Plaintiff-Debtor filed an appeal on the matter which was ultimately dismissed. Thus, Plaintiff-Debtor cannot attempt to re-litigate this issue in the current adversary proceeding.

The order dismissing the Complaint in *Hard Stone CBO Trust v. Clear Recon Corp., et al*, 20-2102, does not state that it is a dismissal with prejudice. The Motion to Dismiss asserts that the Hard Stone Complaint failed to state a claim. Federal Rule of Civil Procedure 41(b), which is incorporated into Federal Rule of Bankruptcy Procedure 7041(2)(a) states that when there is an involuntary dismissal of the adversary proceeding is without prejudice.

The dismissal of the prior adversary proceeding is an adjudication of the rights and interests.

Plaintiff Cannot File an Adversary Complaint to Seek Relief from Judgement

Defendant asserts this adversary complaint seeks relief from the final judgement granting Defendant relief from the automatic stay. Defendant states that in order to seek rescindment of a final

judgement, Federal Rule of Bankruptcy Procedure 60(b)(3) requires Plaintiff-Debtor to seek such relief by filing a motion, not by commencing an adversary proceeding. Moreover, Ninth Circuit case law has determined that a violation of the automatic stay is treated as civil contempt. *Havelock v. Taxel (In re Pace)*, 67 F.3d 187, 193 (9th Cir. 1995). Federal Rule of Bankruptcy Procedure 9020 provides that allegations of civil contempt are contested matters and thus relief must be requested by motion. Here, Plaintiff-Debtor filed an adversary proceeding instead of a Motion for Violation of the Stay as required by the Bankruptcy Rules.

Moreover, even if the court were to take this adversary proceeding as a Motion for Reconsideration, Federal Rule of Bankruptcy Procedure 60(b)(3) requires a motion to be brought within a reasonable time and not more than a year from the date of the Order. Here, the Order Granting Annulment of the Stay occurred over four years ago, and thus this request is untimely.

Defendant had Standing and Annulment was Appropriate

A review of the Motion for Relief reflects that Bank of America was in possession of the Note at the time of the filing of their Motion. Case 17-21266, Dckt. 39 at 2:3-5. Moreover, pursuant to Cal. Comm. Code § 1201(b)(21)(A), a person, in this case Defendant, is the holder of a note if either (1) the note has been made payable to the person who has it in their possession, or (2) the note is payable to the bearer of the note. The term “bearer” is defined by the California Commercial Code, as a person in possession of the negotiable instrument, document or title, or certificated security that is payable to bearer or endorsed in blank. Cal. Comm. Code § 1201(b)(5). At the time of the Motion for Relief, Defendant asserts that the Note is endorsed and payable in blank. Case 17-21266, Dckt. 39 at 2:3-5; Exhibit 1, Dckt. 40. Defendant being the “holder,” was then “person entitled to enforce” the Note. Cal. Comm. Code § 3301(i).

As holder of the Note, Bank of America had standing to seek Annulment of the Automatic Stay. Because Bank of America had standing to file its Motion, the Stay was properly annulled on the basis that Plaintiff-Debtor and Hard Stone had engaged in multiple bankruptcy filings to hinder Defendant’s rights and Defendant was unaware of the transfer and the bankruptcy filing. Hard Stone did not file an Opposition to Defendant’s Motion for Relief.

Plaintiff-Debtor disputes that Bank of America was the holder, asserting that the negotiation had been forged. Thus, because it is alleged that the negotiation was forged, Defendants could have no standing.

Plaintiff-Debtor’s assertion reflects a misunderstanding of relief from stay proceedings. They are not ones in which the court adjudicates the underlying rights of the parties to determine if they can prosecute the actions for which relief from the stay is requested.

Relief from stay proceedings are primarily procedural. *Veal v. Am. Home Mortgage Serv., Inc. (In re Veal)*, 450 B.R. 897, 914 (9th Cir. BAP 2011). They typically determine whether the equities justify releasing the moving creditor from the legal effect of the automatic stay. *Id.* Because of the limited scope of inquiry, neither the movant's claim nor its security should be litigated in the relief from stay proceeding. *Id.* (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740-41 (9th Cir. 1985)); see also *Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33 (1st Cir. 1994) (“We find that a hearing on a motion for relief from stay is

merely a summary proceeding of limited effect. . . ."). "Given the limited nature of the relief, . . . the expedited hearing schedule § 362(e) provides, and because final adjudication of the parties' rights and liabilities is yet to occur, . . . a party seeking stay relief need only establish that it has a colorable claim" *In re Veal*, 450 B.R. at 914-15 (emphasis added) (citing *United States v. Gould (In re Gould)*, 401 B.R. 415, 425 n.14 (9th Cir. BAP 2009)).

Harms v. Bank of N.Y. Mellon (In re Harms), 603 B.R. 19, 27 (B.A.P. 9th Cir. 2019).

As stated by the Ninth Circuit Court of Appeals, a dispute over whether the creditor can take the action to foreclose on the property is not the proper subject of a motion for relief from the stay.

Stay litigation is limited to issues of the lack of adequate protection, the debtor's equity in the property, and the necessity of the property to an effective reorganization. Hearings on relief from the automatic stay are thus handled in a summary fashion. *In re Cedar Bayou, Ltd.*, 456 F. Supp. 278, 284 (W.D. Pa. 1978). The validity of the claim or contract underlying the claim is not litigated during the hearing. The action seeking relief from the stay is not the assertion of a claim which would give rise to the right or obligation to assert a counterclaim. *In re Essex Properties, Ltd.*, 430 F. Supp. 1112 (N.D. Cal. 1977). See S. Rep. No. 989, 95th Cong., 2d Sess. 55, reprinted in 1978 U.S. Code Cong. & Ad. News, 5787, 5841. Thus, the state law governing contractual relationships is not considered in stay litigation. 2

In re Johnson, 756 F.3d 738, 740 (9th Cir. 1985).

In substance, the issue presented is whether the party seeking relief from the stay presents a colorable basis for seeking the relief and that grounds are shown pursuant to 11 U.S.C. § 362(d). Though the debtor or trustee may dispute the merits of the underlying action to be taken, such dispute would be the subject of litigation in another forum, not the motion for relief.

Looking at the Motion to Annul the Stay in the Hard Stone CBO Trust case, Defendant alleged:

- (1) Defendant was entitled to enforce the note;
- (2) Defendant was in possession of the note;
- (3) Maria Andrichuk filed a prior Chapter 13 case in January 2012, that was dismissed on April 18, 2012;
- (4) a notice of default had been recorded;
- (5) Maria Andrichuk filed a second Chapter 13 case on April 2, 2014 that was dismissed in September 2014;
- (6) Maria Andrichuk filed a third Chapter 13 case on November 13, 2015, which was dismissed in February 2016;

- (7) a notice of trustee's sale was recorded in April 29, 2016, with a sale set for May 25, 2016;
- (8) on May 24, 2016, Petr Andrichuk filed a Chapter 13 case, which was dismissed on August 24, 2026;
- (9) on November 22, 2016 Petr Andrichuk filed a second Chapter 13 case, which was dismissed in January 2017;
- (10) the property subject to the deed of trust which Defendant asserted the right to enforce was transferred at an unknown date to Hard Stone CBO Trust;
- (11) Hard Stone CBO Trust filed a Chapter 11 case on February 28, 2017;
- (12) Hard Stone CBO Trust listed the real property subject to the deed of trust as property owned by Hard Stone CBO Trust;
- (13) a foreclosure sale on the deed of trust was conducted on March 1, 2017 (the day after the February 28, 2017 filing of bankruptcy by Hard Stone CBO Trust);
- (14) Defendants were not given notice of the Hard Stone CBO Trust bankruptcy case until March 7, 2017; and
- (15) the U.S. Trustee has commenced an adversary proceeding to prevent Charles F. Baldwin, the Trustee for Hard Stone CBO Trust from filing further cases "due to Mr. Baldwin's history of abusive bankruptcies. . . ." ^{FN.1.}

17-21266; Motion to Annul Stay, Dckt. 35.

FN. 1. In Adversary Proceeding 17-2042, *United States Trustee v. Charles F. Baldwin*, Mr. Baldwin stipulated to a five year injunction from filing any bankruptcy petition for a trust, unless the Chief Bankruptcy Judge in the District in which he seeks to file such bankruptcy gives prior authorization. 17-2042; Stipulation, Dckt. 26. Judgment thereon enjoining Mr. Baldwin was entered on July 12, 2017. *Id.*; Dckt. 28.

Though Plaintiff-Debtor disputes that the asserted rights and interests by Defendants exist, such is not adjudicated in a relief from stay proceeding. The above does state a colorable claim for relief, and for which the judge in the Hard Stone CBO Trust case granted relief annulling the stay in that case.

The Hard Stone CBO Trust bankruptcy case was dismissed on March 30, 2017. 17-21266; Order, Dckt. 28. The order Annulling the Stay was entered on June 23, 2017. *Id.*; Order, Dckt. 44. The Hard Stone CBO Trust case was closed on July 31, 2017. *Id.*; Order, Dckt. 52.

On April 20, 2020, three years after the case was closed, a Motion to Reopen was filed by Hard Stone CBO Trust. *Id.*; Motion, Dckt. 53. The case was reopened and on May 26, 2020, three years after the case had been filed and three years after the case had been dismissed, Hard Stone CBO Trust

filed its Original Schedules, which state under penalty of perjury that Hard Stone CBO Trust owned two assets: (1) \$200 cash and (2) ownership of the 1757 Park Oak Drive, Roseville Property, as of the February 28, 2017 commencement of its bankruptcy case. *Id.*; Schedule A/B, Dckt. 58 at 2-9. On Original Schedule D also filed on May 26, 2020, Hard Stone CBO Trust states under penalty of perjury that it had one creditor, Bank of America, and no creditors on Original Schedules E and F. *Id.* at 10-19. The Original Schedules are signed by attorney Clifford B. Scherer, and not a trustee of the Hard Stone CBO Trust. *Id.* at 24. On the Statement of Financial Affairs Hard Stone CBO Trust, signed by Clifford B. Scherer, Attorney, that Hard Stone CBO Trust:

- (1) Had no income in the year the bankruptcy case was filed or the prior two years;
- (2) Made no payments to any creditor or transfers during the year prior to filing the bankruptcy case;
- (3) Was involved in no legal actions;
- (4) Made no payments relating to the bankruptcy case;
- (5) Closed no financial accounts within a year of the filing of the bankruptcy case;
- (6) Has no businesses;
- (7) Has no books and records; and
- (8) Has no financial statements.

Id. at 25-38.

Though belatedly filed, Hard Stone CBO Trust has affirmatively stated under penalty of perjury that it is the one and only debtor who could have an objection with respect to the order on the Motion to Annual the Stay entered against Hard Stone CBO Trust that was entered on June 23, 2017, now four years in the past. Further, that it is Hard Stone CBO Trust whose automatic stay was at issue with respect to the March 1, 2017 foreclosure sale.

The Motion to Dismiss Adversary Proceeding is warranted because Plaintiff-Debtor lacks standing to file this adversary proceeding, seeking to be the “officious intermeddler” trying to assert rights of the third party, Hard Stone CBO Trust. ^{FN.2.}

FN. 2. “Officious Intermeddler” is a person who seeks to assert the rights and interests of another, but does not have the legal right to do so.

Legal Definition of officious intermeddler

: one who unnecessarily meddles in the affairs of another and then seeks restitution or compensation for the beneficial results but who is barred from receiving it

officious intermeddler . . . (18c) Someone who confers a benefit on another without being requested or having a legal duty to do so, and who therefore has no legal grounds to demand restitution for the benefit conferred. — Sometimes shortened to intermeddler. — Also termed (archaically) volunteer. See benefit officiously conferred under BENEFIT (2); VOLUNTEER (4).

Black's Law Dictionary (11th ed. 2019)

The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss Adversary Proceeding filed by Bank of America, National Association (“Defendant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and this Adversary Proceeding is dismissed as to Bank of America, N.A. for all claims asserted in the First Amended Complaint.

IT IS FURTHER ORDERED that Plaintiff-Debtor is not granted leave to file a further amended complaint by this order. If Plaintiff-Debtor seeks relief to file a further amended complaint as provided in Federal Rule of Civil Procedure 15(a)(2) and Federal Rule of Bankruptcy Procedure 7015, Plaintiff-Debtor shall include a copy of the proposed further amended complaint filed as an exhibit in support of any such motion.